IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.656 OF 2007
IN
CRI.APPEAL NO. 750 OF 2004

Imtiyaz @ Elias Mumtiyaz Shaikh ..Applicant

Vs.

The State of Maharashtra ..Respondent

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Mr.Aniket Vagal i/b Ms.Anjali Patil Advocate for Applicant
Mrs.V.R.Bhosale AGP for State

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**CORAM: R.M.S.KHANDEPARKAR, AND
SMT.V.K.TAHILRAMANI, JJ.**

DATE : JULY 03, 2007

P.C. [PER SMT.V.K.TAHILRAMANI,J.]:

1. Heard the learned advocate for the applicant and the learned AGP for the State.

2. The applicant has been convicted under Section 302 and 364 of IPC. It is the prosecution case that the applicant along with others, took away the

deceased from his work place and thereafter, the applicant cut throat of the deceased. P.W.7 Mohammed Shakir Shaikh who was co-worker of the deceased, has stated that on the day of the incident, the applicant along with others came to the work place. They waited for half an hour for the deceased. Thereafter, these persons took away the deceased with them. He has identified the applicant before the Court. Besides this, the evidence of P.W.1 Police Constable Keshavrao Yeshwant Janjurne who is the complainant in the present case, also implicates the applicant. P.W.1 Janjurne has stated that at the relevant time, he was on patrolling duty on the wireless van. He stated that he had received a message about an injured person from the control room, hence, he rushed to the spot. There he saw the injured was lying in a pool of blood with an injury on his throat. When he made enquiry with the injured person, the injured person disclosed that his name was Shabab Khan and he also disclosed that one Mr.Imtiyaz (applicant) of Bandra Plot, Jogeshwari inflicted injury with knife to him. It is not disputed that the address of the applicant is Bandra Plot, Jogeshwari. Shabab Khan has died

shortly thereafter on account of injury to his throat. P.W.1 Janjurne did not know the applicant prior to the incident. He has no previous enmity with the applicant so as to implicate him falsely. Looking to the evidence of P.W.1 Janjurne and P.W.7 Mohammed Shakir Shaikh, we do not think that this is a fit case to grant bail.

3. At this stage, Mr.Vagal submitted that the applicant was a juvenile at the time of offence and hence, the applicant may be released on bail on that ground. The incident had occurred on 5.7.1995. At any stage, no such ground was taken by the applicant during the investigation or even during the trial before the trial Court. Now at this belated stage, reliance is placed on a Birth Certificate to show that the applicant was a juvenile on the date of offence. However, on perusal of the said Certificate, we find that it cannot be reliably said that the said Certificate does belong to the applicant as the name mentioned in the Birth Certificate and the name mentioned by the applicant in the application, do not tally. In this view of the matter, we are not inclined to grant bail.

4. Liberty is granted to the applicant to prepare the paper book privately at his own costs and thereafter prefer application for fixed date of hearing.

5. Application is rejected.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]